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CORRESPONDENCE.

Assessment of Standing Timber Trees for Taxation.

Editor, "Virginia Law Register:"

Are standing timber trees a subject of taxation for the year 1908? In re House Bill No. 73, approved March 12th, 1908, providing for the assessment of standing timber trees by the Commissioners of the Revenue.

By the passage of this act it was the evident intent of the Legislature to amend § 437A, of Pollard's Code, so as to include standing timber trees, but the Legislature had no power or authority to give to the Commissioners of the Revenue the right to assess standing timber trees. Section 437 of the Code was amended by Acts, 1902-03-04, page 610, to put in operation § 171 of the Constitution, providing for the assessment of real estate, and § 437A of the Code was enacted, Acts, 1902-03-04, page 610, to put in operation § 172 of the Constitution, providing for the assessment of all coal and other mineral lands. Section 171 of the Constitution expressly provides: "The General Assembly shall provide for a re-assessment of real estate, in the year 1905, and every fifth year thereafter, except that of railways and canal corporations, which after January the first, 1913, may be assessed as the General Assembly may provide."

Now it has been expressly held by the Court of Appeals in *Stuart v. Pennis*, 91 Va. 688, and *Va. Coal & Iron Co. v. Kelly*, 93 Va. 336, that timber is real estate, and Judge Reily, in delivering the opinion of the court, said: "Land includes everything belonging or attached to it. It includes the surface, and whatever is contained within or beneath the surface. It includes the minerals buried in its depths or which crop out of its surface, and the woods and trees growing upon it." Now standing timber trees being real estate, they cannot be assessed by the Commissioners of the revenue, only by an assessor as provided by § 437 of the Code, which provides for the assessment of real estate every five years, and as the Act of March 12th, 1908; Acts, 1908, p. 331, gives the Commissioners of the Revenue the authority to assess standing merchantable timber trees every year, it is certainly directly in the teeth of the Constitution, and expressly prohibited by § 171, therefore the said Act is unconstitutional. Section 172 of the Constitution provides for the assessment of coal and mineral lands, in such manner as the General Assembly may see fit, and it may require that the Commissioners of the Revenue assess coal and mineral lands every year, or every two years; but the General Assembly cannot change the general assessment of lands or real estate—this must be done every five years by an assessor appointed for that purpose, and not by the commissioners of the revenue. It is therefore clear to my mind that the act of March 12th,

1908, so far as it provides for the assessment of standing timber trees by the Commissioners of the Revenue, is certainly unconstitutional.

At the time of the passage of the act of March 12th, 1908, the question was before the supreme court as to whether standing timber trees were taxable for the year 1905, and on the very day of its passage the court decided in *Vansant, Kitchen & Co. v. Commonwealth*, 60 S. E. 753, that there was no law authorizing standing timber trees to be assessed for taxation for said year 1905 separate and apart from the land upon which they stand. The Legislature recognized the fact that there was no law authorizing the taxing of standing timber trees, and by the act of March 12th, 1908, it undertook to give the Commissioners of the Revenue authority to do so, but in this it failed for the reason stated above. The court expressly held in the *Vansant Case*, that upon the passage of the act of March 17th, 1906, all authority ceased to tax standing timber trees separate and apart from the land upon which they stand.

Since this decision the Camp Manufacturing Company (reported in 14 Va. Law Reg. 89) moved the Circuit Court for the County of Brunswick, to exonerate it from the payment of taxes for the years 1906 and 1907, on standing timber trees, and the Hon. Jesse F. West, the judge of the said court, has just rendered an opinion holding that there was no authority for the taxation of standing timber trees for the years 1906 and 1907, and in delivering the opinion said: "The act of March 17th, 1906 (Acts, 1906, p. 555) was intended to embrace the whole legislation on the subject to which it refers and to be wholly substituted for all other statutes on the same subject, thereby repealing by implication all other enactments upon the subject of assessing lands (timber) for taxation. I am therefore of the opinion that the decision in the *Vansant case*, *supra*, is conclusive of the question presented in the case at bar, and that the plaintiff is entitled to the relief prayed for." The effect of this decision is to relieve the owners of standing timber trees of taxes for the years 1906 and 1907.

Representing large lumber interests as counsel, I shall attack the Act of March 12th, 1908, as being unconstitutional and void, and shall be glad to discuss this question with any counsel similarly situated as to how is best to proceed to have the said act declared unconstitutional.

EDW. R. TURNBULL, JR.

Desired Reforms in Our Criminal Laws.

Editor, "Virginia Law Register:"

Ever since I became an attorney for the commonwealth, I have been satisfied that our criminal laws needed a radical change. At the last session of the Legislature, I drafted several bills, which I